

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>Dr. Joseph Ciccio, <i>et al.</i>,</b>	)	
	)	<b>Civil No.: 3:19-cv-00845</b>
<b>Plaintiffs,</b>	)	
	)	<b>Judge Aleta A. Trauger</b>
<b>v.</b>	)	
	)	<b>Magistrate Judge Barbara D. Holmes</b>
<b>SmileDirectClub, LLC, <i>et al.</i>,</b>	)	
	)	<b>Special Master Samuel P. Funk</b>
<b>Defendants.</b>	)	
<hr/>		<b>JURY DEMAND</b>

**DEFENDANTS' MOTION TO DISMISS CERTAIN OF  
PLAINTIFFS' CLAIMS ON THE PLEADINGS**

Pursuant to Federal Rule of Civil Procedure 12(c), Defendants SmileDirectClub, Inc., SmileDirectClub, LLC, SDC Financial, LLC, Smile of New Jersey, P.A., Smile of Tennessee, P.C., David Katzman, Steven Katzman, Alexander Fenkell, Jeffrey Sulitzer, and Camelot Venture Group respectfully ask the Court to enter judgment in their favor on Plaintiffs' claims premised upon the allegations in Section H of Plaintiffs' corrected Second Amended Complaint ("SAC").

First, Plaintiffs cannot succeed on claims for violation of the Food, Drug, and Cosmetic Act ("FDCA"), as the FDCA does not provide a private right of action. Instead, only the Food and Drug Administration can enforce the FDCA.

Second, Plaintiffs' claims that SDC should have told consumers that SDC is engaged in the illegal practice of dentistry also fail as a matter of law. Plaintiffs have not alleged, and cannot allege, facts that create a material issue for adjudication at trial with respect to any of these marketing "fraud-by-omission" theories.

Third, the SAC does not contain any factual allegations to support the legal conclusion that the Defendants have engaged in the illegal practice of teledentistry.

The Court has not addressed these arguments previously. Defendants submit a memorandum in support of their Motion.

Respectfully submitted,

/s/ D. Alexander Fardon

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on the below via the Court's ECF Filing System this 17th day of September, 2021.

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